INSTRUCTIONS TO STUDENTS

1. SECTION A consists of three (3) questions, and SECTION B of five (5) questions. All EIGHT questions must be answered.

2. Students must use a separate examination answer book for each section. Answer books must be clearly marked on the front cover as either “SECTION A” or “SECTION B”

3. Kindly ensure that you enter your correct student number on all answer books submitted.

4. Please write neatly and legibly.

5. This examination is a CLOSED BOOK EXAMINATION.

6. This question paper consists of EIGHT (8) pages. Kindly ensure that you have all of them.

7. Reference to applicable legal principles and relevant case law is essential in answers to all of the questions.
SECTION A (Dr A Louw)

Answer all questions in Section A in a separate answer book.

**Question 1**

In the case of *Morgan Air Cargo (Pty) Ltd v Sim Road Investments CC and Another* (22024/06) [2009] ZAGPPHC 36, the North Gauteng High Court (per Murphy J) allowed a purchaser of land sold at an auction to rescind the contract of sale on the basis of a mistake induced by a misrepresentation made by the seller’s agent, even though the contract of sale contained a clause exempting the seller from liability for misrepresentations.

1.1 Explain (with brief reference to the facts of the case) the two alternative causes of action which were relied on by the purchaser in support of its claimed right to rescind the contract and the reasons given by the court for its order.

[4 marks]

1.2 Critically evaluate the correctness of Murphy J’s findings regarding the mistake and its effect on the validity of the contract. Explain (with reference to legal principles and relevant case law) whether there is any significant problem with the court's approach, bearing in mind that the Supreme Court of Appeal subsequently dismissed the seller’s appeal against Murphy J’s judgment with the following comment:

‘[Murphy J’s order in the court a quo] was correctly made but for the wrong reasons. This is not about mistake but about fraud.’

(Bosielo JA in *Sim Road Investments CC v Morgan Air Cargo (Pty) Ltd* (024/10) [2010] ZASCA 091, at par.9)

[3 marks]

[Question 1 total: 7 marks]
Question 2

James is studying hard for his Contract Law exam, but is finding things difficult because his prescribed textbook does not contain very detailed discussion of mistake at contracting, and he slept through most of the lectures. The students have been told that the section on mistake will be one of the most important sections of the upcoming exam. James hears that Sally, one of his classmates, has done very well in the class tests because she has been using another textbook on contract law, which James has heard contains a very well written and detailed chapter on mistake. The evening before the exam, James phones Sally and says that he wants to buy this very expensive textbook from her so that he can use it to study for the exam. Sally can hear that James is desperate, and she names her price as R700.

James quickly sells his iPod to his roommate to raise money and he phones Sally back to say ‘we have a deal’. She promises to deliver the book to James that evening. Sally had lent the book to another classmate, Bob, three weeks earlier, when Bob had wanted to use it to study for the Contract Law class test. When she received the book back from Bob the day before the test, she had noticed that Bob had carefully torn the chapter on mistake out of the book without visibly damaging the book. (He later explained that he could not get to the library in time, before it closed, to photocopy the chapter on mistake). Later, on the evening before the exam, Sally drives to campus and delivers the book to James, who pays her the R700. They wish each other luck in studying for the next day’s exam.

When James settles down to do some all-night studying he is shocked to find that the most important chapter is missing. He can’t reach Sally on her cell phone, which is switched off. James has a panic attack and starts drinking and eventually passes out. The following morning he oversleeps and misses the exam. James is very angry, and he wants his money back from Sally. Sally laughs at James and says ‘go play in the traffic, a deal’s a deal, and it’s no wonder you’re flunking Contract Law!’ . Meanwhile, James’s roommate has accidentally started a small fire in their room while trying to bake some suspicious chocolate brownie cookies. The textbook is destroyed in the fire.
Advise James as to his legal position on these facts, with reference to relevant case law and by explaining any and all remedies in law which James may have in the circumstances.

[10 marks]

Question 3

In 2005 the Supreme Court of Appeal held that there is no objection in principle to recognising ‘economic duress’ in our law of contract as a basis for the voidability of a contract. The court, however, pointed to a practical difficulty in proving this form of duress. Explain, with reference to the relevant SCA judgment referred to, what this difficulty is, and whether courts may in future find guidance in dealing with this difficulty through the approach of the North Gauteng High Court in the case of *P Gerolomou Constructions (Pty) Limited v Van Wyk (A1462/05)* [2010] ZAGPPHC 258 (22 November 2010).

[3 marks]

Section A Total: 20 marks

continued/...
Question 4

Smith, who lives in Durban, and Jones who lives in Cape Town, both pensioners, met each other at an Eastern Cape holiday resort during December 2011. While they were on holiday there, they discussed the possibility of Jones buying Smith’s vintage car, a 1956 model Ford V8. Before they left the Eastern Cape, they exchanged addresses.

After each of them had returned home, Smith wrote a letter to Jones in which he offered to sell the Ford V8 to him for R40 000. Smith posted the letter in Durban on 15 January 2012. Jones received the letter in Cape Town on 19 January 2012. Thereafter, on 24 January 2012, Jones wrote a letter to Smith in which he unconditionally accepted the offer. Jones posted the letter in Cape Town on the same day. On 31 January 2012, Smith received this letter in Durban. It clearly showed the Cape Town post office date stamp of 24 January 2012.

However, before Smith received the letter of acceptance, he had realised that, because of its vintage value, he could get substantially more for the car if he sold it on the open market. Therefore, on 23 January 2012, he posted a letter to Jones in which he withdrew the offer. Jones received the letter of withdrawal on 28 January 2012.

Advise Jones whether he is entitled to claim delivery of the vehicle from Smith against payment of the price of R40 000.

[6 marks]
Question 5

Ndlovu and Khumalo entered into a written contract for an initial period of five years in terms of which Ndlovu undertook to render transport services to Khumalo. The contract was renewable for a period of five years at Khumalo’s option. A certain clause in the contract (referred to as the ‘matching clause’) made provision for the situation where Khumalo decided not to exercise the renewal option, but to invite new tenders. The matching clause provided as follows:

‘On the expiry of the initial agreement Ndlovu shall have the right to compete with or match the lowest or any other acceptable tender which Khumalo may receive in respect of a new transportation contract.’

At the end of the initial five-year contract, Khumalo did not exercise the renewal option, but he invited new tenders. Ndlovu also submitted a tender. His tender matched that of Luthuli which was the lowest acceptable tender.

Khumalo now wants to award the tender to Luthuli, but Ndlovu claims that the tender should be awarded to him in accordance with the matching clause in their original contract.

Advise Ndlovu as to his chances of success in obtaining a court order compelling Khumalo to award the tender to him.

[6 marks]
Question 6

Vuvu, an ice-cream manufacturer, employed Zela in Johannesburg as a specialist flavour developer and taster. A clause in Zela’s contract of employment provided that after termination of the contract he was prohibited for a period of ten years from participating in any way in the ice-cream trade anywhere in Gauteng.

After working for Vuvu for six years, Zela terminated the employment in order to go on an overseas trip. A year later, after Zela had returned from overseas, Louis, an ice-cream manufacturer doing business in Pretoria, offered Zela employment. Zela accepted the offer.

Vuvu, who has heard that Zela is working in Pretoria, is unhappy about this. Explain Vuvu’s legal position in this regard.

[11 marks]
Question 7

Sarah and her uncle (Fred) entered into an agreement that he would pay her the entire amount that she had spent on study fees for the year if she passed her examination in Contract Law. Sarah studied very hard (at least one hour per day, including weekends, for the whole semester). However, on the morning of the examination Fred visited Sarah under the pretence of wishing her well. While he was with her, he dropped a sleeping pill into her coffee. Sarah fell asleep during the examination and failed it.

Fred refuses to pay the amount of the study fees to Sarah. Explain the legal position with reference to legal principles and relevant case law.

[5 marks]

Question 8

Victoria, who operates a laundry business in Soweto, ordered two new washing machines from Zeba Supplies (Pty) Ltd. Zeba knew that Victoria required the machines for immediate use, as she had contracts to wash the outfits of a number of soccer teams, including amongst others, Kaizer Chiefs and Orlando Pirates.

There was a delay in the delivery of the washing machines and, as a result, Victoria could not render services to her clients as required. Consequently, some of the clients terminated their contracts with her. Due to bad publicity resulting from this, Victoria also lost the tender which she had submitted to wash soccer jerseys for teams participating in the 2013 CAF competition.

Victoria wishes to claim damages from Zeba on the basis of breach of contract. Advise her as to the legal position in the circumstances.

[12 marks]